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No. 90-1904

In the Supreme Court of the United States

OCTOBER TERM, 1991

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, AFL-CIO, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether the courts below correctly construed a consent decree settling the government's civil RICO action against the union to: (1) amend the union's constitution to provide for new election procedures; and (2) permit amendments to the union's constitution that are inconsistent with the terms and objectives of the consent decree only upon prior approval by the government or the district court.

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OPINIONS BELOW

The court of appeals' order (Pet. App. 1-4) is not reported. The district court's opinion and order entered on May 6, 1991 (Pet. App. 7-54), and the district court's order entered on May 7, 1991 (Pet. App. 5-6) are not yet reported.

JURISDICTION

The court of appeals' order was entered on June 7, 1991. The petition for a writ of certiorari was filed on June 13, 1991. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. 1254(1).

STATEMENT

1. In June 1988, the United States filed this civil action under the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. 1961 *et seq.*, against petitioner union (also referred to herein as IBT), petitioner's governing General Executive Board and its 18 members, and a number of alleged organized crime operatives. The complaint alleged that the IBT had long been under the control of organized crime, and sought equitable relief to rid the union of such control. Compl. 109-111. See also *United States* v. *IBT*, 931 F.2d 177, 180 (2d Cir. 1991).

In March 1989, on the eve of trial, the parties agreed to a consent decree, which the district court entered as an order of the court. Pet. App 55-107. The principal goal of the consent decree is to wrest the union from the influence of organized crime and return authority to the union members by, *inter alia*, establishing a new system of rank-and-file elections of IBT officers. Pet. App. 56-57, 64-65, 78-83. See *United States* v. *IBT*, 931 F.2d at 181. The consent decree requires three court-appointed officers to carry out the terms of the decree and monitor the union's activities.[1]

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[1] The three officers include an Independent Administrator, an Investigations Officer, and an Election Officer. Pet. App. 66. Among other powers, the administrator is vested with powers equivalent to the union's General President and General Executive Board to discipline corrupt officials and to appoint temporary trustees to run the affairs of affiliated entities. Pet. App. 67-68. The Investigator is empowered to bring disciplinary charges and, where appropriate, institute trusteeship proceedings. Pet. App. 68-72. The Election Officer supervises all phases of the electoral process. Pet. App. 82. With certain exceptions, the authority of the court-appointed officers will terminate when the union's 1991 elections are certified. Pet. App. 58-60.

The consent decree expressly states that "[t]he IBT Constitution shall be deemed amended, and is hereby amended, to provide for the following new election procedures." Pet. App. 78. Candidates for international union officer positions are to be nominated at the union convention by delegates chosen in rank-and-file elections conducted at the local union level. Pet. App. 78-79. After the candidates are nominated, the officers are to be elected by a direct rank-and-file, one-member/one-vote, secret ballot. Pet. App. 81.

The decree's election provisions additionally provide:

> At the IBT 1991 International Convention, the delegates shall be presented with the aforesaid amendments for vote; provided further that nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin free speech right of any IBT officer, delegate or member, including the parties hereto.

Pet. App. 83.

The decree, at para. D.9, also generally states:

> (a) The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order.
>
> (b) By no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT Constitution to incorporate and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote. If the IBT has not formally so amended the IBT Constitution by that date, the Government retains the right to seek any appropriate action, including enforcement of this order, contempt or reopening this litigation.

Pet. App. 63-64.

Paragraph L.17 of the decree further declares that the "parties intend the provisions set forth herein to govern future IBT practices in those areas." Pet. App. 101. That paragraph requires the union to give the government prior written notice of any proposed changes to the consent decree provisions incorporated in the union's constitution. If the government objects to the proposed change as "inconsistent with the terms and objectives" of the consent decree, then "the change shall not occur." *Ibid.* The union may then seek a determination from the district court as to whether the proposed change is inconsistent with the terms and objectives of the consent decree. Pet. App. 101-102.

Finally, the consent decree provides that the district court shall have continuing jurisdiction over implementation of the decree and that the court shall enter final judgment upon satisfactory completion and implementation of the decree. Pet. App. 58.

2. The IBT International Convention was scheduled for June 24, 1991. Pursuant to the terms of the consent decree, delegates to the convention were to nominate the candidates who would be on the ballot for the December, 1991, rank-and-file election of union officers. Prior to the convention, the government learned that members of the IBT leadership were attempting to derail the rank-and-file election. These officials were orchestrating an effort to have the convention repudiate the consent decree's rank-and-file election procedure and replace it with an election of the union's executive officers by a vote of delegates at the convention itself. Pet. App. 10; C.A. App. 137, 144-150, 218-252, 254-262. To protect the rank-and-file elections provided for by the consent decree, the government sought a declaration from the district court that the consent decree's election procedures could not be altered except in accord with para. L.17

of the decree, entitled "Future Practices." Pet. App. 101. The government further sought an order enjoining the IBT's executive board, members, agents and affiliates from taking any action to alter the function of the nominating convention, except in compliance with the decree's future practices provision. Pet. App. 9-11.

3. On May 6, 1991, the district court issued an order granting the relief requested by the government.

As an initial matter, the district court rejected the union's argument that the government's allegations were too speculative. The court noted that the IBT's attorneys, including its General Counsel, refused to deny or dispute the government's allegations that IBT executives were planning to use the convention to avoid the rank-and-file elections required by the consent decree. Pet. App. 23-24.

The court held that the terms of the consent decree were expressly incorporated into the IBT constitution and could not be vetoed by the convention delegates. Pet. App. 27-28. The court explained that the decree's requirement of a convention vote on the decree was added only because of then-existing uncertainty about whether the General Executive Board could bind the IBT's affiliates and members to the constitutional changes made by the consent decree. Pet. App. 27. The district court determined that the clear intent of the parties was to amend the constitution forthwith to incorporate the decree and bind all subordinate entities. Pet. App. 27-32. The court further noted that, since entry of the consent decree, the court of appeals had firmly established that the General Executive Board did have authority to bind the IBT's members and affiliates. Pet. App. 32-39. The

court concluded that the convention vote on the decree thus "will now have no legal effect" and that "[n]o action by the IBT at the convention can undercut the provisions of this Consent Decree." Pet. App. 40.

Accordingly, the court issued a declaration that the electoral and disciplinary terms of the consent decree are part of the IBT constitution and are binding upon the IBT's subordinate entities, unless the decree's provisions are changed in accordance with para. L.17 of the decree. Pet. App. 53. Further, the court declared that the function of the 1991 IBT convention in nominating candidates for the December rank-and-file elections "may not be expanded, limited, altered, or otherwise changed in any way without full compliance with the provisions of ¶ L.17 of the Consent Decree." *Ibid.* Finally, the court enjoined the IBT and its subordinates from attempting to alter or circumvent the nominating function of the 1991 convention as delineated in the consent decree, unless their actions are authorized pursuant to para. L.17 of the decree. Pet. App. 53-54.

On May 7, 1991, the district court amended its May 6th order to include the sentence: "Nothing in this opinion shall be construed to alter the provisions of the Consent Decree that require the Consent Decree's amendments to be put to the convention delegates for a vote." Pet. App. 5-6.

4. The IBT filed an expedited appeal with the Second Circuit. On June 7, 1991, the Second Circuit issued an order affirming the district court's decision on the merits. Pet. App. 1-4.[2]

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[2] The June convention was held as scheduled. The consent decree's terms were presented to the delegates, who voted to reject them after extensive debate. See Proceedings, 24th Convention, IBT 172-199 (June 24, 1991).

5. On June 13, 1991, the IBT acting through its executive officers, filed the present petition for certiorari in this Court. On June 17, 1991, a group of elected convention delegates who had been denied permission to intervene in this action by the district court (Pet. App. 25-26), but had been permitted to intervene on appeal (Pet. App. 3-4), filed an application for an emergency stay with Justice Marshall, who denied it on June 19, 1991.

ARGUMENT

1. Petitioner objects to the enforcement of the express terms of a consent decree to which it voluntarily agreed. Petitioner does not contend that the decisions of the Second Circuit or the district court enforcing the consent decree conflict with decisions of this Court or any other court. The question of whether the courts below properly construed the consent decree accordingly does not warrant review by this Court.

2. In any event, the courts below correctly construed the consent decree. The decree by its own terms amends the IBT constitution and prohibits further amendments to the constitution inconsistent with the terms and objectives of the decree unless the union receives approval of the government or the district court. These terms do not, as the IBT contends (Pet. 26, 28), grant the government "control" over the union. Rather, they simply ensure that the rank-and-file election procedures provided for by the decree will be honored. The rank-and-file election is central to the consent decree's goal of wresting the union from the influence of organized crime by returning power to the union membership. The decree

does not in any way diminish the free speech rights of the membership or require the convention delegates to vote in any particular manner. The lower courts' orders upholding the express terms of the decree are thus correct and the petition should be denied.

a. Petitioner argues that the consent decree should be construed to allow the convention delegates to rescind all of the decree's provisions, including the provisions requiring rank-and-file elections. However, the decree clearly provides that its terms are incorporated into the union's constitution and that the union may not amend the constitution in the future to alter the terms of the decree absent prior approval of the United States or the district court. See Pet. App. 63-64, 101-102. The union's contention that it may unilaterally terminate its agreement with the government is not supported by the decree's express terms or by the intent of the parties as presented to the district court at the time the decree was entered.

Consent decrees "should be construed basically as contracts," *United States* v. *ITT Continental Baking Co.*, 420 U.S. 223, 236-237 (1975), and "should be interpreted in a way that gives effect to what the parties have agreed." *SEC* v. *Levine*, 881 F.2d 1165, 1179 (2d Cir. 1989). Consistent with that approach, this decree must be read to amend the union's constitution. In the section specifically addressing changes in the union constitution, the consent decree expressly provides: "The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order." Pet. App. 63. Again, before setting out the new rank-and-file election procedures, the decree states: "The IBT Constitution shall be deemed amended, and is hereby amended, to provide for the following new election procedures." Pet. App. 78. That language unambig-

uously demonstrates that the parties intended that the decree would, upon its entry by the district court, become a part of the union constitution.

The union argues that, although the constitution was amended by the decree at the time the decree was entered, the decree should not be read to bar the convention delegates from amending the constitution to nullify any or all of the decree's provisions. Pet. 30-31. That argument ignores the fact that the union agreed to para L.17 of the decree. That paragraph, entitled "Future Practices," expressly states that the parties "intend the provisions set forth [in the decree] to govern future IBT practices." Pet. App. 101. Further, para. L.17 establishes the exclusive mechanism for amending the decree terms incorporated in the union constitution. If "the IBT wishes to make changes, constitutional or otherwise, in those provisions, the IBT shall give prior written notice to the [United States]." *Ibid.* If the United States "objects to the proposed changes as inconsistent with the terms and objectives of [the consent decree], the change shall not occur; provided, however, that the IBT shall then have the right to seek a determination from [the district court] * * * as to whether the proposed change is consistent with the terms and objectives set forth herein." Pet. App. 101-102.

There is nothing unclear about para. L.17. It provides the mechanism to alter or modify the decree provisions incorporated into the union constitution. See *United States* v. *IBT*, 905 F.2d 610, 620 (2d Cir. 1990) (para. L.17 "specifically requires the IBT to refrain from any unilateral changes, 'constitutional or otherwise,' in the broad areas covered by the Consent Decree"). Paragraph L.17 (and the decree itself) would be rendered a nullity if the convention

delegates could simply veto any or all of the decree provisions at will. *Ibid.*

b. In arguing that the convention delegates had power to veto the decree's provisions, the union relies upon the decree provisions mandating a delegate vote upon the decree. Pet. 30. However, as the district court recognized, those provisions do not provide the delegates with veto authority. See Pet. App. 26-32.

At a hearing on March 14, 1989, immediately prior to entry of the consent decree, the district court raised the issue of whether there was any inconsistency between the provisions in the decree amending the union constitution forthwith to incorporate the consent decree's terms and the provisions for a vote by convention delegates upon the decree. C.A. App. 301. Government counsel, speaking for the parties, explained:

> The document makes clear that the constitution of the IBT is deemed amended immediately. In the government's view, that is a permanent amendment and not subject to change, absent the provision we were just talking about [para. L.17, the future practices provision], first coming to the government for change, and if the government says no, then going to this Court or another court of competent jurisdiction.
>
> However, your Honor, there have been legal issues raised in this case. Your Honor saw it when certain locals made motions * * *. Certain local officials or local unions may in the future raise legal challenges about the amendment of an international constitution in a manner that was by court order rather than pursuant to the constitution which calls for ratification at a convention.

> We believe, the government believes, your Honor, there is no question that the amendments can be ordered by this Court pursuant to a consent decree, and that they are automatically in effect. But if down the road there is a challenge by a local official or a local union, ratification at the convention would eliminate any legal issue at all.

C.A. App. 313-314. Counsel for the IBT did not take exception to this explanation or the reason for submitting the decree's provisions to the convention delegates for a vote, *i.e.*, to eliminate any doubts that might later be raised about the decree's legal effect.

Upon hearing this explanation, the district court requested the parties to clarify the document accordingly. C.A. App. 314. The parties modified certain language in the document and reported back to the district court later that day. C.A. App. 390. Government counsel stated, again without contradiction from IBT counsel, that "[e]very provision in the document is deemed automatically amended in the IBT constitution as of the date of entry of the Court order" and that paragraph 9(a) and (b) of the consent decree "explain[s] fully the intent of the parties." C.A. App. 395.

As adopted, paragraph 9 of the decree provides:

> (a) The IBT Constitution shall be deemed and hereby is amended to incorporate and conform with all of the terms set forth in this order.
>
> (b) By no later than the conclusion of the IBT convention to be held in 1991, the IBT shall have formally amended the IBT Constitution to incorporate and conform with all of the terms set forth in this order by presenting said terms to the delegates for a vote. If the IBT has not

> formally so amended the IBT Constitution by that date, the Government retains the right to seek any appropriate action, including enforcement of this order, contempt or reopening this litigation.

Pet. App. 63-64.

The district court was satisfied by the parties' clarification and ordered, with the parties' approval, that the colloquy between the parties and the court set out above be "deemed incorporated by order of this Court" and "be read and considered together with the formal consent order." C.A. App. 397. The district court then approved the consent decree. C.A. App. 397-405.

In light of the above proceedings, the intent of the parties is clear. The consent decree provisions are part of the IBT constitution and cannot be changed without prior approval of the United States or the district court. The delegate vote was included only as a safety net provision, so that in the event a court found that the General Executive Board could not bind the IBT's affiliates or membership, the government would not be left without a remedy.

c. Petitioner asserts that reading the consent decree to preclude the delegates from rescinding the decree's terms would grant the United States government "control of the union * * * in perpetuity." Pet. 27. See also Pet. 26, 28, 32. That is a mischaracterization of the consent decree. The decree's cardinal purpose is to eliminate organized crime's influence over the IBT and return control of the union to its rank-and-file membership. To ensure that result, the decree amends the union constitution, establishing rank-and-file election procedures. To ensure the permanence of its reforms, the decree

provides that constitutional changes in the areas covered by the decree cannot be made without prior approval of the United States or the district court. These provisions of the decree do not "disenfranchise[] the rank-and-file" (Pet. 34); rather, they ensure that the union leadership will be selected by the rank-and-file and will therefore represent the interests of the membership.

d. Petitioner argues that the decree should not be read to limit the free speech rights of the delegates or the membership. Pet. 29-30. The United States agrees. The decree itself guarantees that "nothing herein shall be deemed or interpreted or applied to abridge the Landrum-Griffin free speech right of any IBT officer, delegate or member, including the parties hereto." Pet. App. 83.

Accordingly, the union members are free to speak and vote against the decree and any or all of the decree's terms. Indeed, the June convention has already been held and the union delegates are reported to have exercised those rights with no inhibitions. See Proceedings, 24th Convention, IBT 172-199 (June 24, 1991). The decree's terms were presented to the delegates, who voted to reject them. *Id.* at 199. While the members and delegates retain their free speech rights, amendments to the union constitution that implicate the consent decree may be made only in conformance with para. L.17. Accordingly, the district court correctly held that the delegates' vote on the decree "will now have no legal effect." Pet. App. 40.[3]

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[3] Petitioner contends that the district court's order required the delegates to vote for the decree. Pet. 34-35. When read in context, however, the district court simply said that the union delegates could not rescind the rank-and-file voting pro-

3. Petitioner implies that the decree should not be enforced because the General Executive Board members who signed the agreement did not have the power to bind the union membership to amendments in the union constitution. Pet. 33. That argument is without merit.

The Second Circuit in prior appeals by the IBT and certain of its subordinate entities has firmly established that the General Executive Board did have authority to bind the union's affiliates and membership to the decree's constitutional changes. The IBT constitution allowed the union leaders to amend the constitution as a "result of judicial direction." See *United States* v. *IBT*, 905 F.2d at 622. Thus, the court of appeals held that "as far as the constitutionally delegated powers of the IBT and its officers are concerned, IBT members * * * are bound by the Consent Decree." *United States* v. *IBT*, 931 F.2d 177, 184 (1991).

The court of appeals further explained that "the collective IBT membership was adequately represented in the litigation leading to the Consent Decree" (931 F.2d at 187), and consequently could be bound by that decree. *Id.* at 185-187. The court noted that, had the government pursued the lawsuit to final judgment and prevailed, the relief granted "would have led to the appointment of a trustee to take over the IBT's affairs," thus rendering "questions concerning the method of selecting IBT Convention delegates and IBT officers insignificant." *Id.* at 186. In the face of that possibility, the IBT

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cedures and attempt to elect the executive officers themselves. Pet. App. 50-52. The district court correctly held that such an action would conflict with the consent decree and should be enjoined. Pet. App. 52-54.

was not "powerless to accept a settlement" to avoid a result that "would have abrogated even greater portions of the IBT Constitution." *Ibid.* To the contrary, the decree represented the "collective interest of the IBT membership in both eliminating the influence of organized crime within the union and in doing so at the least cost to internal union processes." *Ibid.* Accordingly, because the union membership was adequately represented when the decree was fashioned, the membership was bound by the changes made to the union constitution.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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